STATE OF MICHIGAN

COURT OF APPEALS

IMPERIAL CONSTRUCTION COMPANY, INC., Plaintiff/Counter-Defendant/Appellant,	UNPUBLISHED March 17, 2011
v	No. 295728 Oakland Circuit Court
INDEPENDENT BANK, Defendant/Counter-Plaintiff/Appellee.	LC No. 2008-095447-CH

Before: CAVANAGH, P.J., and JANSEN and SERVITTO, JJ.

PER CURIAM.

Plaintiff/counter-defendant/appellant appeals as of right the order of the trial court dismissing, by stipulation of the parties, the counterclaim of defendant/counter-plaintiff/appellee. On appeal, plaintiff seeks reversal of the trial court's order granting defendant's motion for summary disposition of the complaint, pursuant to MCR 2.116(C)(10), and its order granting partial summary disposition in favor of defendant on defendant's counterclaim, also pursuant to MCL 2.116(C)(10). We affirm.

This case arises from a dispute between the parties concerning the priority of their competing interests in real property. Plaintiff performed construction on the property, apparently pursuant to a contract with the developer, and recorded construction liens in 2004. In 2005, it filed a lien foreclosure action, which resulted in a January 11, 2006, default judgment, declaring plaintiff's lien recorded December 13, 2004, to be valid and superior to all other interests, if any.

Not named to the 2005 foreclosure action, however, was defendant, Independent Bank, Whispering Wood's mortgage lender. Independent Bank had recorded a construction mortgage on the property on July 21, 2004.

After entry of the default judgment, the parties engaged in discussions concerning a settlement. The settlement agreement provided for payment by Whispering Woods to plaintiff in the amount of $85,000. The payment was to be paid in 6 monthly installments, beginning when the agreement was signed. The settlement agreement provided that if the payments were not made in accordance with the agreement, the result would be immediate foreclosure of plaintiff's lien at set forth in the January 11, 2006 judgment.

The settlement agreement also provided that plaintiff would subordinate its lien rights to Independent Bank. Attached to the settlement agreement was a "Debt and Lien Subordination Agreement" setting forth the subordination. This document was signed by plaintiff, Whispering Woods, and Independent Bank. After receiving some of the payments from Whispering Woods, plaintiff executed the "Debt and Lien Subordination Agreement." It thereafter received no payments from Whispering Woods.

Plaintiff thereafter proceeded to foreclose on the property. At a January 23, 2007 sheriff's sale conducted pursuant to the January 11, 2006 default judgment in favor of plaintiff, plaintiff purchased a portion of the property (units 1, 4, 5, and 11 through 18, inclusive). The same portion of the property was subsequently sold, and purchased by defendant, at a December 18, 2007 sheriff's sale.

Plaintiff initiated the instant action on October 21, 2008. Plaintiff sought to have the December 18, 2007 sheriff's deed set aside on grounds that the sale was defective because it did not comply with certain statutory provisions. Plaintiff also sought to have the "Debt and Lien Subordination Agreement" rescinded on the basis that Independent Bank had engaged in fraud in procuring the agreement and further sought a declaration that plaintiff's lien is not only valid, but prior and superior to Independent's Bank's interest in the subject property. Independent Bank moved for summary disposition pursuant to MCR 2.116 (C)(10), asserting that there were no defects in the December 18, 2007 sheriff's sale and that plaintiff failed to properly allege a fraud action or provide any other basis for rescinding the subordination agreement. The trial court granted Independent Bank's motion.

We review a trial court's decision to grant a motion for summary disposition de novo. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007). "We review a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. at 551-552 (footnotes omitted.) We review issues of statutory construction de novo as questions of law. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). The proper interpretation of a contract is also reviewed de novo as a question of law. *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

Plaintiff's first argument on appeal is that the December 18, 2007 sale violated MCL 600.3224. We disagree.

MCL 600.3224 provides:

> If the mortgaged premises consist of distinct farms, tracts, or lots not occupied as 1 parcel, they shall be sold separately, and no more farms, tracts, or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the

> date of the notice of sale, with interest and the cost and expenses allowed by law but if distinct lots be occupied as 1 parcel, they may in such case be sold together.[1] [Footnote added.]

As this Court explained in *Sweet Air Inv, Inc v Kenney*, 275 Mich App 492, 497-498, 500; 739 NW2d 656 (2007):

> This Court has stated that MCL 600.3224 is mandatory rather than discretionary. *Cox v Townsend*, 90 Mich App 12, 15; 282 NW2d 223 (1979). The proper inquiry in determining if the property consists of one parcel is whether, at the time of the foreclosure sale, the property was "held, treated, occupied or used" as one parcel. *Id*. at 16. MCL 600.3224 does not require that the parcels be sold separately when doing so would be arbitrary or impractical. *Cox*, [275 Mich App] at 18, citing *Grand River Avenue Christian Church v Berkshire Life Ins Co*, 254 Mich 480; 236 NW 881 (1931). Further, this Court has stated that "[w]hen land is mortgaged as a single parcel, it may be sold as such." *Cox*, [275 Mich App] at 17, citing *Dunn v Fish*, 46 Mich 312; 9 NW 429 (1881). Finally, the mortgagor has the burden of proof in establishing that the lots were not occupied as one parcel. *Cox*, [275 Mich App] at 16.
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> The caselaw clearly establishes that Michigan courts have interpreted MCL 600.3224 to require the sale of individual parcels of property covered under a single mortgage only when those parcels are in fact physically separated and not interconnected or integrated in their use or occupancy.

In this case, the parties provided the trial court with very little evidence on which to base its decision on summary disposition. Neither the complaint nor the parties' briefs in support of and in opposition to defendant's motion for summary disposition attached any evidence concerning the use of the property at the time of the sale. Because MCL 600.3224 requires that mortgaged premises consisting of distinct lots be sold separately only when the lots are "not occupied as 1 parcel," the parcels were covered by a single mortgage, and it was plaintiff's burden to establish that the lots were not occupied as one parcel, *Sweet Air*, 275 Mich App at

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[1] MCL 600.3208 appears in Chapter 32 of the Revised Judicature Act, which pertains to "Foreclosure of Mortgages by Advertisement." The December 18, 2007, foreclosure sale was apparently conducted in accordance with Chapter 32, in particular MCL 600.3208, which provides for notice of foreclosure by publication and posting. According to the December 18, 2007, sheriff's deed, "a notice was duly published and a copy thereof was duly posted in a conspicuous place upon the premises . . . ."

498; *Cox*, 90 Mich App at 16, the trial court did not err in concluding that MCL 600.3224 did not require the sale of the lots as separate parcels.

In addition, the mortgage contains a waiver of rights under MCL 600.3224:

> **RIGHTS AND REMEDIES ON DEFAULT.** Upon Default, and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:
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> * * *
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> **Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshaled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales and Grantor waives Grantor's rights under MCLA Section 600.3224 to have separate parcels sold separately and to have no more parcels than necessary sold. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

In *Metropolitan Life Ins Co v Foote*, 95 Mich App 399; 290 NW2d 158 (1980), this Court considered the effect of a contractual provision in the mortgage instrument at issue, which provided that, upon default, the mortgaged property may be sold "en masse." The argument in *Met Life* was under MCL 600.3165, rather than MCL 600.3224.[2] The Court held:

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[2] MCL 600.3165, which appears in Chapter 31 of the Revised Judicature Act ("Foreclosure of Mortgages and Land Contracts) provides, in relevant part:

> (1) If the defendant does not bring into court the amount due, with costs, or if for any other cause a judgment is entered for the plaintiff, and if it appears that the premises can be sold, in parcels, without injury to the interests of the parties, the judgment shall direct as much of the premises subject to the mortgage or land contract to be sold as is sufficient to pay the amount then due on the mortgage or land contract, with costs, and the judgment shall remain as security for any subsequent default.
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> (3) If it appears to the court that the premises subject to the mortgage or land contract are so situated that a sale of the whole premises will be most beneficial to the parties the judgment shall be entered for the sale of the whole premises in the first instance. . . .

> In *Clark v Stilson*, 36 Mich 482 (1877), the Court stated that property in a foreclosure sale is required to be sold in parcels in order to protect the right of redemption, but where a party waives his right to redeem in advance and for valuable consideration, he cannot object to the fact that the sale was not made in parcels.
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> The mortgage instrument in question was an arm's length agreement between businessmen, like any other contract. See generally, *Northrip v Federal National Mortgage Ass'n*, 527 F2d 23 (CA 6, 1975), where a power of sale in a mortgage was found to be a private contractual remedy. See also, *Cramer v Metropolitan Savings & Loan Ass'n*, 401 Mich 252; 258 NW2d 20 (1977). If the language of a contract is plain and unambiguous, the intention expressed and indicated in the contract holds. *Charles J Rogers, Inc v Dep't of State Highways*, 36 Mich App 620, 627; 194 NW2d 203 (1971). The contractual provision agreed to by the parties does not contravene Michigan public policy, as the statute providing for sale by parcels was merely designed to protect the redemption rights of the parties where no other provision for a foreclosure sale is specified. See *Macomb v Prentis*, 57 Mich 225, 228; 23 NW 788 (1885), *Masella v Bisson*, [359 Mich 512, 517-518; 102 NW2d 468 (1960)]. There is no indication that Metropolitan acted in bad faith by choosing to exercise its option to sell the property en masse. [*Met Life*, 95 Mich App at 404.]

While we are not bound by *Met Life*,[3] we agree with defendant that its reasoning applies here. Plaintiff fails to articulate any coherent reason that defendant should be deprived of a right for which it contracted, as long as defendant's interest under the construction mortgage takes priority over plaintiff's interest. Plaintiff claims that the mortgagor (the developer) could not waive plaintiff's rights with respect to the property. Plaintiff, however, was on notice of the mortgage, which was recorded on July 21, 2004, when it recorded its lien on December 13, 2004. Moreover, as further discussed, *infra*, plaintiff failed to name defendant as a party to the 2005 foreclosure action.

Plaintiff's second argument on appeal is that the December 18, 2007, sheriff's sale and deed are invalid and must be set aside because the official who conducted the sale lacked the statutory authority to do so. We disagree.

"The Michigan Supreme Court has held that it would require a strong case of fraud or irregularity, or some peculiar exigency, to warrant setting a foreclosure sale aside." *Sweet Air*, 275 Mich App at 497 (quotation marks and citations omitted). *Sweet Air*, 275 Mich App at 497,

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[3] This case is not binding on a subsequent panel of the Court of Appeals because it was issued before November 1, 1990. MCR 7.215(J)(1).

cited, in part, *Detroit Trust Co v Agozzinio*, 280 Mich 402, 405-406; 273 NW 747 (1937), in which the Michigan Supreme Court held:

> When property is exposed for sale under a judicial decree, and offered to the highest bidder, and the sale is without fraud, and is fairly conducted, after proper notice, and is struck off to a third person, it will require a strong case, and some peculiar exigency, to warrant a court in setting it aside.
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> This reasoning is also applicable to a foreclosure by advertisement of a mortgage containing a power of sale. [*Id*. (citation and quotation marks omitted.)]

In this case, plaintiff fails to articulate any "peculiar exigency" that would warrant setting aside the sale.

MCL 51.70 authorizes the sheriff to "appoint 1 or more deputy sheriffs at the sheriff's pleasure," and further provides that "[p]ersons may also be deputed by a sheriff, by an instrument in writing, to do particular acts, who shall be known as special deputies." Either type of appointment may be revoked at any time. The December 18, 2007, sheriff's sale was conducted by Matthew J. Chodak. Chodak is authorized to serve and execute civil process pursuant to an "Agreement to Serve And/Or Execute Civil Process for the Oakland County Sheriff's Office" (Service of Process Agreement) and "Deputization Addendum" to that agreement. As defined in the agreement, civil process includes "selling lands on the foreclosure of a mortgage by advertisement; executing deeds and performing all related services required on sale of property . . . ." The Service of Process Agreement is an agreement, in writing, between Oakland County Sheriff Bouchard and County Civil Process Services, Inc. (the contractor), under which the contractor agrees to perform all of the responsibilities of the sheriff's office for serving and executing civil process. The agreement specifies that:

> The CONTRACTOR further agrees that no CONTRACTOR duty or obligation on behalf of the SHERIFF'S OFFICE, under the terms of this Agreement, shall be assigned, subcontracted, delegated, or otherwise be permitted to be performed by any person who is not, at the time of any such performance[,] both a CONTRACTOR EMPLOYEE(S) and a Special Deputy of Sheriff Michael J. Bouchard appointed in accordance with the DEPUTIZATION ADDENDUM.

The Service of Process Agreement is signed by Thomas A. Law, Chairperson of the Oakland County Board of Commissioners, Sheriff Michael J. Bouchard, and Chodak, as President of County Civil Process Services, Inc.

The Deputization Addendum provides, in relevant part:

> CONTRACTOR, shall submit to Sheriff Michael J. Bouchard, a request that Sheriff Michael J. Bouchard appoint a specific individual, CONTRACTOR'S EMPLOYEE(S) as a Special Deputy pursuant to MCL 51.70, with the powers of a deputy sheriff, to serve and/or execute that Civil Process, which has been delivered to CONTRACTOR by Sheriff Michael J. Bouchard, required by law to be served and/or executed by a deputy sheriff within the County of Oakland.

* * *

> This Agreement shall not, in any manner, limit, or be interpreted to limit, the unilateral and complete discretion of Sheriff Michael J. Bouchard to either deputize, refuse to deputize, or revoke the deputization of CONTRACTOR and/or any CONTRACTOR'S EMPLOYEE(S) at any time. . . .

According to his November 2008 affidavit, Chodak is employed as a "special deputy" pursuant to the Service of Process Agreement, and was "deputed as a Special Deputy pursuant to MCL 51.70 and the Deputization Addendum appended to the Agreement." Chodak further states, "I executed my oath pursuant thereto on January 4, 2005. A copy of the Oath is on record at the Oakland County Clerk's Office." Defendant has provided, as it did before the trial court, a copy of the written oath signed by Chodak and dated January 4, 2005 ("I do solemnly swear that I will support the Constitution of the United States, and the Constitution of this State, and that I will faithfully discharge the duties of the office of Deputy Sheriff according to the best of my ability."). Chodak acknowledged that, pursuant to the Service of Process Agreement and the Deputization Addendum, he was not authorized to perform any service for the Sheriff's Office other than to serve and execute civil process as defined in the agreement.

Thus, despite the lack of precision in the use of the terms "deputy sheriff" and "special deputy" in the relevant documents, it is clear that Chodak was appointed, and served, as a "special deputy," with powers limited to service and execution of process as defined in the Service of Process Agreement.[4] His appointment as a "special deputy" meets the only requirements of MCL 51.70: it was "by a sheriff" and "by an instrument in writing." Plaintiff claims that no record of Chodak's appointment exists, in violation of MCL 51.73, but that statute, by its plain terms, does not apply to special deputies.[5]

We further disagree with plaintiff's argument that the December 18, 2007, sale must be set aside because it was not conducted in accordance with MCL 600.3216, which does not permit

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[4] It is worth noting that the January 23, 2007, sale of the units to plaintiff was also conducted by Chodak, and the sheriff's deed for that sale, like the December 18, 2007, deed, represents Chodak as "a Deputy Sheriff." Plaintiff does not take issue with the January 23, 2007, sale.

[5] MCL 51.73 provides:

> Every appointment of an under sheriff, or of a deputy sheriff, and every revocation thereof, shall be in writing under the hand of the sheriff, and shall be filed and recorded in the office of the clerk of the county; and every such under sheriff or deputy shall, before he enters upon the duties of his office, take the oath prescribed by the twelfth article of the constitution of this state. *But this section shall not extend to any person who may be deputed by and sheriff to do a particular act only.* [Emphasis added.]

a "special deputy" to conduct a foreclosure sale.[6] Under MCL 600.3216, a mortgage foreclosure sale may be conducted by the sheriff, and MCL 51.70 authorizes the sheriff to appoint special deputies to perform "particular acts." The apparent meaning of the special deputies provision of MCL 51.70 is that the sheriff may delegate authority to special deputies to perform "particular acts" that the sheriff himself is authorized to perform.

In addition, MCL 600.3216 permits the sale to be "made by the person appointed for that purpose in the mortgage," which demonstrates that there is nothing about a foreclosure sale that inflexibly requires it to be performed by a person who occupies one of the positions specified in the statute. Moreover, plaintiff does not take issue with the January 23, 2007, sale, which Chodak also conducted. Plaintiff claims, in a footnote of the facts section of its brief on appeal, that it was permissible for Chodak to conduct the January 23, 2007, sale, because that was a judicial foreclosure sale under MCL 600.3125.[7] While plaintiff is correct concerning the applicable statutory provision, this undermines plaintiff's attempt to attach significance to the representation of Chodak as a "Deputy Sheriff," rather than a special deputy, in the December 18, 2007, form deed. Plaintiff does not question Chodak's competence to conduct the sale, or challenge the manner in which he conducted it. Thus, particularly in light of Chodak's conduct of the January 23, 2007, sale, and plaintiff's position that *that* sale was proper, we conclude that plaintiff has failed to demonstrate the existence of any "peculiar exigency" that warrants setting aside the sale.[8]

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[6] MCL 600.3216 provides:

> The sale shall be at public sale, between the hour of 9 o'clock in the forenoon and 4 o'clock in the afternoon, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder.

[7] MCL 600.3125 provides:

> All sales of land on foreclosure of a land contract or mortgage on real estate shall be made by the county clerk of the county in which the judgment was rendered or of the county where the land or some part of the land is situated, by a deputy county clerk, or by some other person duly authorized by the order of the court. These sales shall be at public sale between the hour of 9 a.m. and 4 p.m. and shall take place at the courthouse or place of holding of the circuit court in the county in which the land or some part of it is situated or at any other place the court directs. The sale is subject to section 6091.

[8] Plaintiff cites four cases that it claims support its position. Three are orders of Michigan circuit courts, and one is a judgment of a United States Bankruptcy Judge for the Eastern District of

Plaintiff's third argument on appeal is that the trial court erred in ruling that defendant was a necessary party to the foreclosure action plaintiff filed in circuit court in 2005. We disagree.

Plaintiff brought its 2005 foreclosure action under the Construction Lien Act (CLA), MCL 570.1101 *et seq*. "Proceedings for the enforcement of a construction lien and the foreclosure of any interests subject to the construction lien shall not be brought later than 1 year after the date the claim of lien was recorded." MCL 570.1117(1). "A construction lien arising under [the CLA] shall take priority over all other interests, liens, or encumbrances which may attach to the building, structure, or improvement, or upon the real property on which the building, structure, or improvement is erected when the other interests, liens, or encumbrances are recorded subsequent to the first actual physical improvement." MCL 570.1119(3). "Each person who, at the time of filing the action, has an interest in the real property involved in the action which would be divested or otherwise impaired by the foreclosure of the lien, shall be made a party to the action." MCL 570.1117(4).

Under MCL 570.1302, "Substantial compliance with the provisions of [the CLA] shall be sufficient for the validity of the construction liens provided for in this act, and to give jurisdiction to the court to enforce them."

> The scope of a statutory "substantial compliance" provision requires an analysis, on a case-by-case basis, of the following logically relevant factors among others: the overall purpose of the statute; the potential for prejudice or unfairness when the apparent clarity of a statutory provision is replaced by the uncertainty of a "substantial compliance" clause; the interests of future litigants and the public; the extent to which a court can reasonably determine what constitutes "substantial compliance" within a particular context; and, of course, the specific language of the "substantial compliance" and other provisions of the statute. [*Northern Concrete Pipe, Inc v Sinacola Companies-Midwest, Inc*, 461 Mich 316, 321-322; 603 NW2d 257 (1999).]

In *Advanta National Bank v McClarty*, 257 Mich App 113; 667 NW2d 880 (2003), this Court concluded that substantial compliance with MCL 570.1117(4) was consistent with *Northern Concrete Pipe*, 461 Mich at 316. *Advanta*, 257 Mich App at 120-121. Turning to the question of what constitutes "substantial compliance" with MCL 570.1117(4), the Court concluded that:

> A lien claimant cannot be made to find every possible party who claims to have some kind of interest in the property. Instead, a lien claimant can only be required to notify every party who has a known or recorded interest. [*Id*. at 121.]

The Court noted that Erb Lumber, the party that filed the foreclosure action at issue in *Advanta*, had complied with other provisions of the Construction Lien Act by filing the action in the

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Michigan. To the extent these courts even addressed the same question presented here, these rulings are not binding on this Court.

county where the property was located, and giving a proper notice of lis pendens, and public notice. *Id*. at 122. Moreover, the Court emphasized, Advanta National Bank did not record a mortgage on the property at issue until after Erb Lumber had initiated foreclosure proceedings and there was no evidence that Erb Lumber had actual notice of any alleged interest Advanta National Bank may have had in the property. *Id*. The Court concluded that Erb Lumber substantially complied with MCL 570.1117(4) by giving notice to all known or recorded interests. *Id*. at 121-122.

In this case, plaintiff argues on appeal that, in light of the substantial compliance provision, and the lack of prejudice to defendant, this Court should conclude, based on the January 11, 2006 default judgment, that its interest in the property is of higher priority than defendant's. Plaintiff claims that there was no potential for prejudice because defendant had no defense to plaintiff's lien foreclosure action, and no potential for unfairness because defendant had actual notice of the action and chose not to intervene.[9] Under *Advanta*, 257 Mich App at 121, however, substantial compliance with MCL 570.1117(4) requires, at a minimum, notifying every party that has a known or recorded interest at the time the action is filed. Defendant's construction mortgage was recorded on July 21, 2004. Thus, defendant had a recorded interest in the property when plaintiff filed the 2005 foreclosure action. Because plaintiff failed to substantially comply with MCL 570.1117(4), the trial court properly ruled that plaintiff could not rely on the January 11, 2006 default judgment of lien foreclosure to establish its rights in the property as against defendant. MCR 3.411(H).[10]

Plaintiff's final argument on appeal is that the trial court erred in ruling that plaintiff failed to plead fraud with particularity. We disagree.

Plaintiff's argument on appeal is based on a distinction between fraudulent misrepresentation and fraudulent inducement. Plaintiff claims that it stated a claim for fraudulent inducement with sufficient particularity by clearly alleging, in its complaint, that it was induced, by "promises of continued payment" by defendant's representatives, to enter into an agreement "to subordinate its lien," and that the promises turned out to be false. Pursuant to MCR 2.112(B)(1), "[i]n allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity." The court rule makes no distinction between fraudulent misrepresentation and fraudulent inducement, and a review of Count III of the

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[9] Plaintiff cites no record support for the claim that defendant had actual notice.

[10] MCR 3.411(H) provides:

> Judgment Binding Only on Parties to Action. Except for title acquired by adverse possession, the judgment determining a claim to title, equitable title, right to possession, or other interests in lands under this rule, determines only the rights and interests of the known and unknown persons who are parties to the action, and of persons claiming through those parties by title accruing after the commencement of the action.

complaint confirms that plaintiff indeed failed to plead any type of fraud with particularity. The complaint alleges, without any further explanation, that defendant "fraudulently procured" the September 2006, "Debt and Lien Subordination Agreement" between plaintiff, the developer, and defendant, and that such fraud "provides the basis for this court to rescind" the agreement. The complaint also references unspecified "threats and coercion" on the part of defendant. It is entirely unclear from the complaint what specific acts form the basis of the claimed fraud. Accordingly, the trial court did not err in granting defendant's motion for summary disposition with respect to Count III of the complaint.[11]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Deborah A. Servitto

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[11] In the trial court, plaintiff sought leave to amend its complaint to add new allegations of fraud as an alternative to its motion for reconsideration following the trial court's grant of summary disposition in favor of defendant. Plaintiff raises an identical argument in its brief on appeal. The argument is addressed to the trial court, and plaintiff does not state what relief, if any, it seeks on appeal with respect to its motion for leave to amend before the trial court.

In any event, plaintiff fails to articulate how its new allegations would form the basis for rescinding the Debt and Lien Subordination Agreement. "[A]ppellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority." *McIntosh v McIntosh*, 282 Mich App 471, 485; 768 NW2d 325 (2009) (quotation marks omitted). And while leave to amend should be freely granted to the nonprevailing party on a motion for summary disposition, the trial court is not required to grant leave to amend if amendment would be futile or otherwise unjustified. *Kimmelman v Heather Downs Management Ltd*, 278 Mich App 569, 571; 753 NW2d 265 (2008); MCR 2.118(A)(2); MCR 2.116(I)(5).